

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRANDON J. HOLMES,
Plaintiff

v.

J. ECK, C. PIZZOLI, M. RUSSO, and
B. MOTTERN,
Defendants

No. 3:16cv644

(Judge Munley)

(Magistrate Judge Arbuckle)

ORDER

AND NOW, to wit, this 21st day of February 2019, we have before us for disposition Magistrate Judge William I. Arbuckle's report and recommendation, which proposes that defendants' motion to dismiss the plaintiff's second amended complaint for failure to join indispensable parties as required by Federal Rules of Civil Procedure 12(b)(7) and 19 be denied.

No objections to the report and recommendation have been filed,¹ and the time for such filing has passed. Therefore, in deciding whether to adopt the report and recommendation, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(B) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that

¹ We note that the plaintiff did file a document entitled "Response to U.S. Magistrate Judge Arbuckle's Report and Recommendation Regarding Defendants' Motion to Dismiss." (Doc. 75). In this filing, however, plaintiff makes clear that he agrees with the findings in Magistrate Judge Arbuckle's R&R.

there is no clear error on the face of the record to accept the recommendation");
see also 28 U.S.C. § 636(b)(1); Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir.
1983).

After a careful review, we find neither a clear error on the face of the record
nor a manifest injustice, and therefore, we shall adopt the report and
recommendation. It is hereby **ORDERED** as follows:

- 1) The magistrate judge's report and recommendation (Doc. 74) is
ADOPTED;
- 2) The defendants' motion to dismiss plaintiff's second amended complaint
(Doc. 70) is **DENIED**; and
- 3) The Clerk of Court is directed to **REMAND** this matter to Magistrate
Judge Arbuckle for further proceedings.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court